

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

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DANIEL L. JUNK,

Plaintiff,

Case No.

v.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM,

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Defendant.

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**INTRODUCTION**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld by Board of Governors of the Federal Reserve System (the “Fed”), an agency of the United States Government, pertaining to Plaintiff’s intangible personal property.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States, in particular, 5 U.S.C. § 552, as amended. Additionally, venue properly lies in this district and this Court has personal jurisdiction over the parties pursuant to 5 U.S.C. §552(a)(4)(B), under which, “the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.”

PARTIES

3. Plaintiff is a resident of Columbus, Ohio.

4. Defendant Fed is an agency of the United States of America within the meaning of 5 U.S.C. §552(f), and has possession and control of the records Plaintiff seeks. According to the Fed, it is charged with supervising and regulating banking institutions to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers, and with providing financial services to depository institutions, the U.S. government, and foreign official institutions, including playing a major role in operating the nation's payments system.

FACTS

5. On April 3, 2018, Plaintiff requested "any records from Maiden Lane LLC and Maiden Lane II LLC and Maiden Lane III LLC containing the Committee on Uniform Security Identification Procedures ("CUSIP") nine-digit, alphanumeric CUSIP number 40431LAR9" (the Requested Records") via the Fed's Website electronic request form.<sup>1</sup>

6. On April 6, 2018, via email containing the reference "Freedom of Information Act Request No. F-2018-00138," Jeanne M. McLaughlin, Manager, Freedom of Information Office for the Fed, acknowledged receipt of Plaintiff's April 3, 2018, request.

7. Plaintiff verified receipt of the Fed's acknowledgment via reply email on April 6, 2018.

8. On May 1, 2018, Ms. McLaughlin, on behalf of the Fed, sent Plaintiff an email stating the Fed was extending the period for its response until May 15, 2018, "pursuant to section (a)(6)(B)(i) of the FOIA."

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<sup>1</sup> <https://www.federalreserve.gov/secure/forms/efoiaform.aspx>

9. On May 21, 2018, after receiving no response from the Fed by its self-imposed extended statutory deadline of May 15, 2018, Plaintiff electronically filed an appeal of the non-response to his April 3, 2018, request, No. F-2018-00138, via email addressed to [FOIA-  
Appeals@frb.gov](mailto:FOIA-Appeals@frb.gov), with the phrase *FREEDOM OF INFORMATION ACT APPEAL* prominently displayed on the first page, and addressed to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & Constitution Avenue, NW, Washington, DC 20551, deeming the Fed's non-response by its extended date of May 15, 2018, to be a denial of his April 3, 2018, request.

10. On June 6, 2018, Plaintiff received an email from the Fed with a letter attached, signed by Margaret McCloskey Shanks, Deputy Secretary of the Board, denying Plaintiff's April 3, 2018, request stating Plaintiff's request did not trigger the Fed's duty to search its records under 12 C.F.R. 261(2)(n)(1) because the Fed is not reasonably likely to have information responsive to Plaintiff's request “[b]ecause these loans were issued by the Federal Reserve Bank of New York (“Reserve Bank”) under the authority of the Reserve Bank, and not as a delegated function of the [Fed], the Reserve Bank, rather than the Board, maintains the records related to Maiden Lane LLC, Maiden Lane II LLC, and Maiden Lane III LLC. Because it is not reasonably likely that the Board possesses records of the kind you request, your FOIA request will not be processed further by the [Fed].”

11. On June 18, 2018, Plaintiff received a second email from the Fed with the same letter attached as was attached to the June 6, 2018 email, denying his April 3, 2018 request a second time.

12. Each of the Fed's denial letters received by Plaintiff states in a footnote that the Fed unilaterally deemed Plaintiff's May 21, 2018, appeal to be a "status inquiry" rather than an appeal.

13. On June 25, 2018, Plaintiff electronically filed his appeal of the denial of his April 3, 2018, request, No. F-2018-00138, via email a second time, addressed to FOIA- Appeals@frb.gov, with the phrase *FREEDOM OF INFORMATION ACT APPEAL* prominently displayed on the first page, and addressed to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & Constitution Avenue, NW, Washington, DC 20551.

14. Plaintiff's appeal states his request does not ask about any loans issued by the Fed or its reserve banks; rather, Plaintiff's request for information is for any records related to a residual security – CUSIP number 40431LAR9 – because, according to the New York Federal Reserve Bank's Website, <https://www.newyorkfed.org/markets/maidenlane.html>, on August 22, 2012, the New York Federal Reserve Bank sold eight residual securities that had been factored to zero and consequently dropped from the portfolio holdings report published by the New York Federal Reserve Bank. Those residual securities were not reported on as a result, with the sale of said unreported residual securities having been undertaken by the New York Federal Reserve Bank's Investment Support Office *in consultation with the Fed.*

15. On information and belief, the Requested Records pertain to Plaintiff's intangible personal property.

16. On information and belief, the Fed possesses the Requested Records.

17. The Fed is obligated to search for and release the Requested Records under FOIA unless it can show that the records are exempt from disclosure.

18. More than 20 working days have passed since the Fed received Plaintiff's second appeal of its denial of his FOIA request, and, in violation of 5 U.S.C. § 552(a)(6)(A)(ii), as of the date of filing this complaint, Plaintiff has never received a response to his June 25, 2018, appeal of the Fed's denial of his April 3, 2018 request under FOIA.

19. Plaintiff has exhausted his administrative remedies.

20. Plaintiff has a statutory right to the Requested Records.

**FIRST CAUSE OF ACTION**

(Request for declaratory judgment under 28 U.S.C. § 2201)

21. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

22. FOIA mandates public disclosure by the Fed of the Requested Records.

23. The Fed has not provided the Requested Records to Plaintiff.

24. An actual and justiciable controversy exists as to whether the Fed has violated FOIA.

25. Plaintiff seeks declaratory judgment that FOIA entitles Plaintiff to the Requested Records and that the Fed should produce those records immediately.

**SECOND CAUSE OF ACTION**

(Request for records improperly withheld in violation of FOIA)

26. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

27. Plaintiff seeks disclosure of, and access to, the Requested Records.

28. The Fed was required to respond to Plaintiff's appeal of its denial of the Requested Records no later than July 24, 2018, but to date, has failed to respond.

29. Plaintiff has exhausted his administrative remedies with respect to receiving a response to his April 3, 2018, request.

30. FOIA mandates public disclosure by the Fed of the Requested Records.

31. The Fed's failure to make the Requested Records promptly available to Plaintiff violates 5 U.S.C. § 552(a)(3)(A).

32. Upon substantially prevailing, Plaintiff should be awarded his attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

33. Declare that the Fed's constructive denial by failing to respond to the substance of Plaintiff's appeal was unlawful;

34. Order the Fed to make the Requested Records immediately available to Plaintiff, and

35. Grant such other and further relief as this Court may deem just and proper.

Dated: Staten Island, New York  
January 14, 2019

Respectfully submitted,

  
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